



California Fair Political Practices Commission

December 15, 1988

Honorable Bill Perry
City Councilmember
1001 W. Center Street
P. O. Box 3000
Manteca, CA 95336

Re: Your Request for Advice
Our File No. I-88-393

Dear Councilmember Perry:

This is in response to your request for advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Because your request is more of a general inquiry rather than a request for advice regarding a specific action pending before the city council, we treat your request as one for informal assistance.^{2/} It confirms the tentative decision conveyed to you during our telephone conversation on or about October 26, 1988.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

QUESTION

You own an office building which is located 3-1/2 blocks from the El Rey Theater. May you participate in city council decisions regarding the improvement of the El Rey Theater property site?

CONCLUSION

You may participate in the decision unless it is reasonably foreseeable that the decision will have a material financial effect on your property or on the tenants on your property.

FACTS

You own an office building in the City of Manteca and you have four tenants. About two blocks away is the boundary of the parking and business improvement area, designated the AB103 district. Despite the designation, the area in AB103 is a developed area.

An old theater building, the El Rey Theater, is located about 1-1/2 blocks into this area, a total of about 3 1/2 blocks from your property. The distance is estimated to be about 1,100 feet. The city council may consider several options for improving the theater building site, including the construction of a shopping mall at the site.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(b) and (c).

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You are a public official. (Section 82048.) You have an interest in real property presumably worth \$1,000 or more. Each tenant on your property is a source of income to you presumably of \$250 or more in the previous 12 months. (Section 82030.) You are therefore prohibited from participating in a decision if it has a foreseeable and material financial effect on either your office building or on any of your tenants. (Section 87103(b).)

Communities adopt redevelopment plans and other improvement plans to promote sound development in designated areas.

One of the major goals of a redevelopment plan is increasing property values, in particular within the project area and less directly within the entire community. In redeveloping the blighted areas of the community, all property becomes more valuable, particularly that which has been redeveloped.

In re Oglesby (1975) 1 FPPC
Ops. 71, 80. (Copy Enclosed.)

Similarly, a major goal of a parking and business improvement area is to improve the property within the area. Such improvements in the parking and business improvement area (the "Area") in the City of Manteca would have a positive effect on property values in the improved area as well as in the surrounding areas. The effect on property values in the surrounding areas would depend on, among other things, the distance from the Area.

Foreseeability

The effect of a decision is foreseeable if there is a substantial likelihood that it will occur. An effect does not have to be certain to be foreseeable. But if an effect were a mere possibility, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

As discussed above, improvements in the parking and business improvement area would have a positive effect on property values in the improved area as well as in the surrounding areas. It is therefore foreseeable that a decision to improve the El Rey Theater site could result in improved property values in its vicinity, including your office building.

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We do not have sufficient information about your tenants to determine whether it is foreseeable that the decision will have a financial effect on your tenants. The effect of a decision may be foreseeable, for example, if one of your tenants is a small grocery store and a retail grocery supermarket was seeking approval to open a store at the El Rey Theater site. In that event it would be foreseeable that the decision to approve the site for the supermarket would have an economic impact on the small grocery store. Thus, based on the circumstances of your tenants and the decision before the city council regarding the El Rey Theater site, you can determine if the decision will have a foreseeable financial effect on your tenants.

Material Financial Effect

For properties located between 300 feet and 2500 feet from the property which is the subject of the decision, the effect of the decision is material if it will have a foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Regulation 18702.3(a)(3)(A)
and (B).

Your property is located about 1100 feet from the theater building. Accordingly, you may participate in the decision relating to that property unless the decision will have a foreseeable financial effect of increasing or decreasing the value of your property by \$10,000 or more or result in an increase or decrease of \$1,000 or more per 12 month period in the rental value of your property.

Presumably, your tenants are business entities. Regulation 18702.2 (copy enclosed) outlines the standards applicable to determine if the effect of the decision on your tenants is material.^{3/}

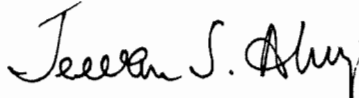
^{3/} In our telephone conversation on November 15, 1988, you indicated that the decision probably would have no effect on any of the tenants.

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I trust this analysis provides you with the assistance you require in determining your responsibilities under the Act. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel

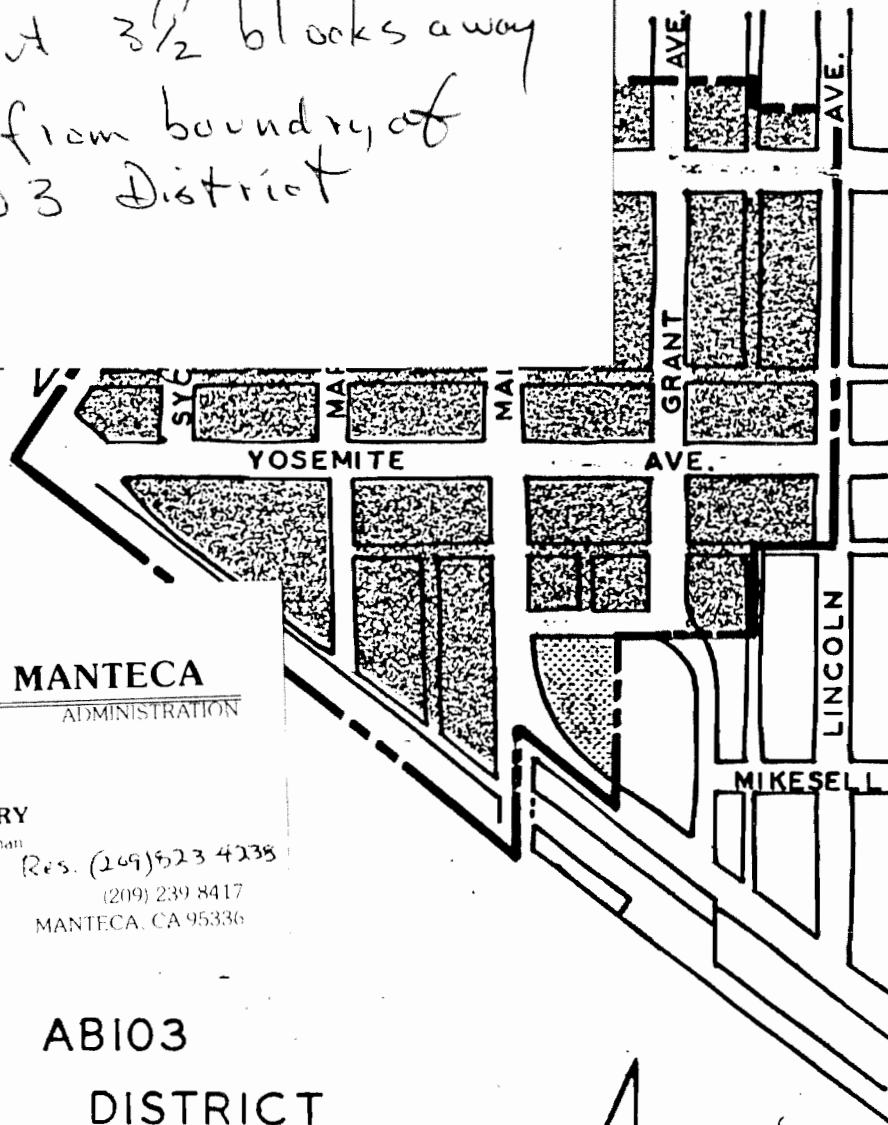
A handwritten signature in cursive script, reading "Jeevan S. Ahuja".

By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosures

Office Bld. is 1,100' from the
subject property
about 3 1/2 blocks away
2 Blocks from boundary of
th AB103 District



CITY OF MANTECA
ADMINISTRATION

BILL PERRY
City Councilman

Res. (209) 523 4238
(209) 239 8417
MANTECA, CA 95336

P.O. BOX 3000
1001 W CENTER ST

AB103
DISTRICT

SCALE: 1" = 400'

DATE: NOV. '66

PARKING AND BUSINESS IMPROVEMENT AREA

REDEVELOPMENT DISTRICT

SHADIED AREA

